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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,871	08/09/2000	Patrice Debregeas	065691/0196	3200

22428 7590 05/28/2003

FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

TRAN, SUSAN T

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 05/28/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant N .

09/582,871

Applicant(s)

DEBREGEAS ET AL.

Examiner

Susan Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22,24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Receipt is acknowledged of applicant's Change of Address filed 01/13/03, Request for The Extension of Time, Request for Continued Examination under 37 CFR 1.114, and Preliminary Amendment filed 04/01/03.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/01/03 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17, 19-22, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fusejima et al. EP 0 648 529 A1 (Fusejima 1).

Fusejima 1 teaches a pharmaceutical granular material coating apparatus comprising rotary drum having cylindrical body portion (2) is formed by partition plates

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(52) and peripheral surfaces of the frame members (51a and 51b), and nozzle (22) for spraying coating (columns 6 and 12; Figs. 1-3). The coating apparatus further comprising a gas supply duct (31), (column 7, lines 8 through column 8, lines 30). The device is used to produce tablets or granules for pharmaceuticals and food products (column 1, lines 1-5).

Fusejima 1 is silent as to the teaching of the parallel sections (22) of the claimed invention. However, Fusejima 1 does teach and suggest the use of partition plates (52) having peripheral surfaces of the frame members (51a and 51b). Thus, it would have been prima facie obvious for one of the ordinary skill in this art to, by routine experimentation modifying Fusejima 1's peripheral surfaces of the frame members (51a and 51b) to obtain the claimed invention, because the reference teaches the advantageous results of gas supply passes through the inner and outer peripheral surfaces to improve the accumulation of coating material onto the granules.

Claims 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fusejima 1, in view of Fusejima et al. US 5,939,097 (Fusejima 2).

Fusejima 1 is relied upon for the reasons stated above. The reference is silent as to the teaching of the packaging of the granule.

Fusejima 2 teaches a food-like medicine composition comprises granule or particulate that can be incorporated into a gelatin capsule (columns 2-3). Thus, it would have been prima facie obvious for one of the ordinary skill in the art to incorporate Fusejima 1's granule into the gelatin capsule in view of the teaching of Fusejima 2. The

reason for this modification is to obtain a satisfactory product useful in pharmaceutical art.

Response to Arguments

Applicant's arguments filed 04/01/03 have been fully considered but they are not persuasive.

Applicant argues that Fusejima 1 does not teach or suggest that the partition plates, by the space between them, can define or form apertures in the drum. In response to applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies e.g., the partition plates, by the space between them, form apertures, are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The apertures recites in claim 1 are nothing but vents to allow gas to pass through between the inside and the outside of the drum. Applicant has not provide any data showing unexpected and/or unusual results between the claimed apertures and the "vent holes" taught by Fusejima 1. It is the position of the examiner that no criticality is seen in the claimed apertures that form a path for a gas flow between the inside and the outside of the drum, since Fusejima 1 recognizes the properties desired by the applicant, e.g., granular material coating apparatus having drying efficiency, flow of gas can be easily changed, easy installation, free from contamination, easy cleaning, and therefore, high quality coating can be

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achieved, thus obtain a satisfactory coating apparatus for tablets, granules and the like useful for pharmaceuticals and food products (column 15).

Applicant argues that there is no motivation to combine Fusejima 1 and Fusejima 2 to obtain the claimed invention. In response to applicant's argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In the instant case, Fusejima 2 is relied upon solely for the teaching of the granule packaging, e.g., gelatin capsule.

Conclusion

This is a continuation of applicant's earlier Application No. 09/582,871. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600
